IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION No. 1067 OF 2007

Office Notes, Office Memoranda of Coram appearances, Court's orders or directions and Registrar's orders :	: : : :	Court's or Judge's orders

Mr. S. B. Keswani, advocate for the petitioner.

Mrs. A. S.Pai, APP for respondent.

CORAM : R.M.S. KHANDEPARKAR
AND
Mrs. V.K. TAHILRAMANI, JJ.

DATE : OCTOBER 8, 2007.

P.C.

. Heard. The petitioner seeks to challenge Section 11 of the Smugglers And Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (hereinafter referred to as the "SAFEMA"), and in that connection, attention is drawn to Section 2(2)(e) of SAFEMA which excludes the the bona fide purchaser from the applicability of SAFEMA.

2. It is undisputed fact that the property in question was subject matter of the SAFEMA proceeding and in that connection the

order of forfeiture was passed on 31st January 1996. The said order was sought to be challenged by the petitioner in appeal on the ground that the petitioner was bona fide purchaser in respect of the property. Appeal came to be dismissed by the Appellate Tribunal on 17th April 1998. Decision of the Appellate Tribunal was sought to be challenged in Writ Petition No. 711 of 1998 which came to be dismissed by this Court on 16th December 2004. Aggrieved by the said order, the petitioner carried the matter in Special Leave Petition (CRL No.1337 of 2005) before the Appex Court. However, the same came to be rejected on 27th April 2007.

3. Now the constitutional validity of Section 11 of SAFEMA is right to be challanged on the basis that it does not make appropriate differenciation between the cases in relation to bona fide purchaser and those who are not bona fide purchasers. It is pertinent to note that in the appeal which was filed by the petitioner challenging the order of forfeiture of property was dismissed holding that the petitioner was not a bona fide purchaser. The

said finding was not disturbed by this Court. The observations by this Court in the judgment dated 16th December 2004 in paragraph 22, to which attention is drawn, discloses that the said finding was not disturbed, besides that the same was arrived at by the Tribunal on the basis of appreciation of the facts pleaded and established and the contentions raised in the matter before the Appellate Tribunal. In other words, the finding arrived at by the Appellate Tribunal that the petitioner was not a bona fide purchaser has attained finality for all purposes.

4. The constitutional validity of provisions of law cannot be challenged, de hors the factual matrix necessary to enable the petitioner to challange the constitutional validity of a statutory provision. Once it is clear from record that petitioner has been declared to be not a bona fide purchaser and the said finding has attained finality, the basic factual matrix which is necessary to challange the constitutional validity of Section 11 of SAFEMA, is lacking in the matter. Vide **Shantlal Bharti Vs. State of**

Punjab [AIR 1988 SC 485] on this ground itself, the petitioner seeking to challange the constitutional validity of Section is liable to be rejected.

5. It is also to be noted that the petitioner's challange to the forfeiture of the property has been rejected by this Court and the Apex Court has also refused to interfere in the said decision. For all purposes, the said decision has attained finality. Judicial discipline requires rejection of the petition at the instance of such petitioner, who has not been able to prove his case on merits.

6. For the reasons stated above, petition is hereby rejected.

Sd/-
[R.M.S. KHANDEPARKAR, J.]

Sd/-
[Smt. V. K. TAHILRAMANI,J.]